



HON. SYLVIA O. HINDS-RADIX  
*Corporation Counsel*

THE CITY OF NEW YORK  
LAW DEPARTMENT

100 CHURCH STREET  
NEW YORK, NY 10007

Marilyn Richter  
mrichter@law.nyc.gov  
212-356-2083

March 17, 2023

Hon. Jennifer L. Rochon  
United States District Judge  
Southern District of New York  
Daniel Patrick Moynihan  
United States Courthouse  
500 Pearl St.  
New York, NY 10007

Re: *Penna et al. v. Banks et al.* 22-CV-09004 (JLR)

Your Honor:

I am an Assistant Corporation Counsel in the office of the Corporation Counsel assigned to represent Defendants the New York City Department of Education (“DOE”) and Chancellor David C. Banks (“City Defendants”) in the above-referenced matter. I write concerning City Defendants’ cross-motion for summary judgement. According to the briefing schedule, endorsed by the Court (ECF No. 18), City Defendants’ cross-motion was due today. There has been no prior request for an adjournment of this motion.

First, I want to apologize for the timing of this letter and for the late notice and request. We were planning to file a cross-motion for summary judgment on the merits today, but have just learned today that the subject of Plaintiffs’ motion for summary judgment (and Defendants’ planned cross-motion for summary judgment) is moot.

The motion and planned cross-motion concern whether Plaintiffs were entitled to direct payment for educational services to the private school, the International Institute for the Brain (“iBrain”), attended by Plaintiff Student during the 2021-2022 school year. That motion and cross-motion were based on Plaintiffs’ challenge to the administrative decision of the State Review Officer, who found that there was no entitlement to such direct payment.

However, pursuant to the doctrine of pendency, which has not been raised in this case, DOE made a direct payment to iBrain for Plaintiff Student’s educational services in the amount of \$235,679.20 for the school year 2021-2022 on March 12, 2022. In addition, DOE

made a direct payment of \$108,612.00 to Sisters Travel and Transportation for the Student's transportation to and from iBrain for the school year 2021-2022 on August 12, 2022. It should be noted that these payments were made before this lawsuit was commenced in October 2022. Accordingly, the motion and planned cross-motion are moot.

We have contacted Plaintiffs' counsel today and informed them of these payments; they are going to look into this next week and then the parties' counsel will have further consultations. In the meantime, Plaintiffs' counsel has consented to an adjournment until next Thursday, March 23, 2022, when the parties will update the Court concerning our updated positions on the status of the lawsuit.

As far as Defendants are concerned, there is one outstanding issue. The motion for summary judgment does not address, although the Complaint asserts, a claim for attorneys' fees. We plan to discuss with Plaintiffs' counsel our respective positions on attorneys' fees and whether fees are warranted. We will advise the Court by Thursday, March 23, 2023 what the parties propose concerning how to proceed.

We thank the Court for its attention to this matter and apologize again for the late notice and request.

Sincerely yours,

/s/ Marilyn Richter  
Marilyn Richter  
Assistant Corporation Counsel

The request is GRANTED. The parties shall file a joint letter by **March 23, 2023**.

Dated: March 20, 2023  
New York, New York

SO ORDERED.

*Jennifer Rochon*  
JENNIEER L. ROCHON  
United States District Judge